may involve an injustice to the plaintiff at law. He has been unnecessarily hampered in the enforcement of a legal right, if it appears that the plaintiff in equity is not entitled to the relief sought. A better disposition of the case, although not sustained by any considerable authority, has been suggested both in England and America.[4] This is merely to retain the bill without relief pending the speedy prosecution by the plaintiff at law of his action there. In the event of his failure so to do, the court of equity is in a position to proceed immediately to give relief. The court thus retains control of the situation without piling up the costs and without interfering with a speedy determination at law of the rights of the parties.

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EXTENT OF THE PUBLIC EASEMENT IN CITY STREETS. — It is commonly stated that the easement of the public in land used for streets consists of the right to use the land for all reasonable public purposes to which a street is naturally fitted. Conversely the owner of the fee is held to retain all rights in the property not inconsistent with the full enjoyment of the easement by the public. It follows that if the latter uses the land for purposes not included within the scope of the original easement it is an infringement of the owner's rights, legally entitling him to compensation. As the standard governing the extent of the public easement is however continually broadening in its application under modern conditions, the landowner's actual rights are becoming more and more restricted, and tend to become identified with those of any other member of the general public.

The difficulty is to determine what is a reasonable use of the street for public purposes. How far can the public go in using a highway without imposing an additional servitude upon the land? In answering this question the courts have naturally distinguished between city streets and country roads on the ground that a city street has always been and may properly be subjected to greater burdens than a road in the country, since it affords a natural and appropriate channel through which necessities and conveniences peculiar to city life may be made accessible to the public.[1]

As to most uses to which city streets can legitimately be put the law is well settled. Thus the public may build sewers,[2] lay water-mains, and gas-pipes,[3] etc., in the highway without being required to compensate the owner of the fee. So horse and trolley cars may be operated and trolley poles and wires erected.[4] Telegraph and telephone poles, on the other hand, are generally held to impose an additional servitude;[5] and such is practically the universal rule in the case of steam railroads of the ordinary type. As to elevated railways the law is not yet settled, but probably the better view is that they entitle the landholder to compensation.[6] An important addition to the law on this general subject has been made by a late Massachusetts case which reaches the conclusion that a tunnel or subway for electric

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[4] Hoare *v.* Bremridge, L. R. 8 Ch. App. 22. See also Glastenbury *v.* McDonald, 44 Vt. 450.

[1] Chesapeake, etc., Co. *v.* Mackenzie, 74 Md. 36, 47.
[2] Cone *v.* City of Hartford, 28 Conn. 363.
[3] McDevitt *v.* People's, etc., Gas. Co., 160 Pa. St. 367.
[4] Taggart *v.* Newport Street Ry. Co., 16 R. I. 668.
[5] See 4 HARV. L. REV. 240.
[6] Story *v.* New York, etc., R. R. Co., 90 N. Y. 122.

cars is not an additional servitude, and gives the owner no such right. *Sears* v. *Crocker*, 69 N. E. Rep. 327. To reconcile such decisions under any single principle which will at the same time furnish a workable rule in deciding new questions, seems well-nigh hopeless. The one first noticed, that of reasonable use, for example, though often laid down, is so vague as to be nearly worthless when applied to meet new conditions. In place of any single principle it is submitted that the authorities fairly result in the following distinct propositions, which define the proper limits of the public's right. (1) The public may make repairs and incidental changes in the land necessary for the fullest enjoyment of its easement. (2) Uses of a highway that are long established and usual, together with new ones analogous to them, such as use for sewers, gas-pipes, etc., impose no additional burden on the land, since they must fairly have been within the owner's contemplation when the easement was acquired. (3) Since a highway is primarily for travel, a strong presumption arises that any use of the land for this purpose is within the scope of the easement, even although its form may be entirely new. This presumption, however, is rebutted by proof that the new mode of travel is necessarily very burdensome or prejudicial to the landowner. The Massachusetts case last referred to is clearly within the application of the third principle thus advanced; and in the absence of any showing that the tunnel would be unreasonably burdensome to the abutter, it is believed to be sound.

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APPORTIONMENT OF A LAKE-BED. — The extensive cutting of forests in recent years has led to the disappearance of a great many fresh-water lakes. Every such occurrence may bring before the courts a most perplexing problem, namely, the apportionment of the lake-bed among the riparian owners. A recent Minnesota case furnishes an example. A non-navigable pond several hundred acres in area gradually dried up, leaving a tract of fertile land. The riparian owners, who, by the law of Minnesota, own the beds of non-navigable ponds, applied to have their boundary lines determined. The Supreme Court on appeal suggested that the riparian owners each take triangular pieces meeting at the centre of the pond. *Scheifert* v. *Briegel*, 96 N. W. Rep. 44.

The problem presented by the case would be greatly simplified if it were possible to say at the outset that there are in lake-beds definitely fixed boundary lines separating the property of the different owners. The law, however, is clearly against such a supposition. Boundaries under streams or lakes are not fixed, but vary with the changes in water-line.[1] If a lake, very deep at one end and shallow at the other, dries up, the owners on the shallow side will have their boundary lines lengthened as the waters recede at the expense of the owners on the deep side. For a correct adjustment of rights, then, it is apparent that a complete history of the pond in the course of its disappearance is necessary. But where an entire pond has wholly dried up in the course of a few years, and it is impossible to get such a history, it would be the practical thing to consider the pond as having disappeared instantaneously. Upon such an assumption the land would have the boundaries which existed at the time the tracts of land around the pond were laid out. It ought to be possible

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[1] Welles *v.* Bailey, 55 Conn. 292.